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board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 *et seq.* or 240.14c-1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

[64 FR 73401, Dec. 30, 1999]

§ 228.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures.* Disclose the conclusions of the small business issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the small business issuer's disclosure controls and procedures (as defined in §§ 240.13a-14(c) and 240.15d-14(c) of this chapter) based on their evaluation of these controls and procedures as of a date within 90 days of the filing date of the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes in internal controls.* Disclose whether or not there were significant changes in the small business issuer's internal controls or in other factors that could significantly affect these controls subsequent to the date

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of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(c) *Asset-Backed Issuers.* A small business issuer that is an Asset-Backed Issuer (as defined in Rule 13a-14(g) and Rule 15d-14(g) under the Securities Exchange Act of 1934 (17 CFR 240.13a-14(g) and 17 CFR 240.15d-14(g) of this chapter) is not required to disclose the information required by this Item.

[67 FR 57287, Sept. 9, 2002]

§ 228.310 (Item 310) Financial Statements.

NOTES: 1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

2. Regulation S-X (17 CFR 210.1 through 210.12) Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S-X (17 CFR 210.2), Item 8.A of Form 20-F (17 CFR 249.220f) and Article 3-20 of Regulation S-X (17 CFR 210.3-20) shall apply to financial statements of foreign private issuers, the description of accounting policies shall comply with Article 4-08(n) of Regulation S-X (17 CFR 210.4-08(n)), and small business issuers engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4-10 of Regulation S-X (17 CFR 210.4-10) with respect to such activities. To the extent that Article 11-01 [17 CFR 210.11-01] (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, small business issuers may wish to consider these items. Financial statements of foreign private issuers shall be prepared and presented in accordance with the requirements of Item 18 of Form 20-F except that Item 17 may be followed for financial statements included in filings other than registration statements for offerings of securities unless the only securities being offered are: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing securities holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (b) pursuant to a dividend or